HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22389 of 2006

Dated:30.10.2006

Between:

S.Subhashini.

…Petitioners

and

The A.P.Industrial Development Corporation, and another.

…Respondent

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22389 of 2006

ORDER:

M/s.Rajiv Polymers Private Limited (hereinafter called, the borrower) Erramansupally Village, Chintakomma Dinne Mandal in Kadapa District, availed industrial loan from the first respondent as well as the second respondent with condition of pari passu charge over the securities consisting of movable and immovable assets of the borrower. As there was default in repayment of the loan, the first respondent initiated action under Section 29 of the State Financial Corporations Act, 1951 (for short 'the Act') and invited tenders for sale/auction of the assets of the borrower. The petitioner submitted her tender and after negotiations she offered Rs.53.5 lakhs for all the assets. At the time of offering the tender she paid a sum of Rs.4.95 lakhs towards Earnest Money Deposit (EMD). However, by impugned letter dated 12.10.2006, the first respondent returned the three cheques for a cumulative amount of Rs.4.95 lakhs to the petitioner on an ostensible reason that the offer made by her is low. Thereafter, the second respondent issued sealed tender-cum-bid notice inviting tenders for the sale of the assets of the borrower. Aggrieved by both the actions, the petitioner filed the instant Writ Petition.

Learned Counsel for the petitioner submits that the action of the first respondent in rejecting the tender/bid of the petitioner as being low

is unreasonable and arbitrary. Strong reliance is placed on condition Nos.23 and 24 of the Terms and Conditions for Sale of Assets under Section 29 of the Act, subject to which, the first respondent invited tenders. **Per contra**, the learned Standing Counsel for the second respondent submits that the Writ Petition is belated and that the petitioner, having failed to avail the opportunity given to her, cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India. He submits that after receiving the highest bid for an amount of Rs.72 lakhs, the second respondent addressed a communication to the petitioner on the same day asking her to respond to the advisement and participate in the sale negotiations on 27.10.2006, but she did not participate. He also submits that the highest offer made by the third party has been notified on the notice board inviting objections and further participation and the petitioner has time up to 02.11.2006 to do so.

Condition Nos.22 to 24 of the Terms and Conditions of the Andhra Pradesh Industrial Development Corporation for sale of the assets of the borrower read as.

> 22. In case the highest offer received through the above process is not acceptable for any reason, including being lower than the upset price, the offers will be rejected, after approval of Vice-Chairman & Managing Director, APIDC.
>
> 23. In case the highest offer arrived by following the procedure of auction and then opening the tenders is acceptable to the Sale Committee, then the offer will be referred to Vice Chairman & Managing Director for acceptance as the 'Benchmark Offer'.
>
> 24. 'Competing Offers' will be invited by advertisement in selected newspapers against the Benchmark Offer. The invitation to submit Competing Offers will also be kept on the Notice Board and Web-site of APIDC. The Competing Offers have to be higher by at least 15% over the Benchmark Offer and shall be in conformity with the terms and conditions given in the tender documents. Seven (7) days will be given from the date of the notice for submission of Competing Offers. The Competing Offers shall also be submitted in the prescribed Tender Form, to be purchased from APIDC.

A plain reading of above conditions would show that mere compliance with the conditions as above would not automatically result in confirmation of the sale in favour of the highest bidder. This is clarified by Condition No.22, which is extracted above.

Even one ignores Condition No.22 it is settled law that the tendering authority can always reject the tenders for whatever reason, if the same is not *mala fide*. In this case, the petitioner's tender was not accepted as being low. There cannot be any dispute on this, especially, when statedly the second respondent received an offer for Rs.72 lakhs. Secondly, the second respondent must be held to have acted very fairly in informing the petitioner to respond to the tender notice dated 16.10.2006. Even now it shall be open to the petitioner to approach the second respondent and offer her bid and also participate in negotiations if she is given such opportunity by the second respondent, within the stipulated time. In this Writ Petition no relief can be granted.

The Writ Petition, with the above observations, is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

30.10.2006
vs